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JUAN CUEVAS

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**(San Jose)**

JUAN CUEVAS,

Plaintiff,

v.

ALTAS REALTY/FINANCIAL  
SERVICES, INCORPORATED, a  
California corporation, dba ATLAS  
REALTY, dba ATLAS FINANCIAL  
SERVICES, ALVIN CLAIR  
SILBERNAGEL, SAMANTHA  
TREVINO, WORLD SAVINGS, INC,  
dba WORLD SAVINGS BANK, FSB,  
and DOES 1 to 100,

Defendants.

) **Case No. C07-02814 JF**  
)  
) **CASE MANAGEMENT**  
) **CONFERENCE STATEMENT AND**  
) **[PROPOSED] ORDER**  
)

) **DATE:** August 31, 2007  
) **TIME:** 10:30 A.M.  
) **ROOM:** 3  
) **JUDGE:** Honorable Jeremy Fogel  
)

)

1 Plaintiff submits this Case Management Statement. Plaintiffs are represented  
2 by Fair Housing Law Project of the Law Foundation of the Silicon Valley and Wilson  
3 Sonsini Goodrich & Rosati.

4  
5 **DESCRIPTION OF THE CASE**

6 **1. Jurisdiction and Service:**

7  
8 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331  
9 because Plaintiff has alleged causes of action for violations of the Federal Truth in  
10 Lending Act, pursuant to 15 U.S.C. § 1601 *et seq.*

11 This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear  
12 and determine Plaintiff's state law claims because those claims are related to  
13 Plaintiff's federal claims, arise out of a common nucleus of operative facts and form  
14 part of the same case or controversy under Article III of the United States  
15 Constitution.

16 No issues exist regarding personal jurisdiction or venue. None of the parties  
17 have been served with this complaint as of the date of this statement.

18  
19 **2. A Brief Description of Events Underlying the Action:**

20 ***Plaintiffs' Description of the Case:***

21 This is a predatory lending case in which plaintiff alleges that defendants acted  
22 in concert to defraud plaintiff Juan Cuevas, a fifty-nine year-old Spanish speaking  
23 man of Mexican heritage, of his home. Plaintiff met with Defendant Samantha  
24 Trevino, a loan officer and licensed salesperson with Atlas Realty/Financial Services  
25 Incorporated to refinance their home in May of 2006. Defendants, acting through  
26 Defendant Samantha Trevino, executed a classic "bait and switch" routine by  
27 promising one thing during their discussions, which occurred in Spanish, then taking  
28 advantage of Plaintiff's limited ability to read and write English and having him sign  
29

1 documents written in English that did not reflect the terms and conditions promised  
2 by Defendants.

3 Defendant Trevino never advised Mr. Cuevas of a number of salient facts  
4 regarding the true nature of the transaction, including the fact that the loan was a  
5 negatively amortizing loan, meaning that the payments had not been set sufficiently  
6 high to pay off the interest as it accrued on the loan, that the amount Mr. Cuevas  
7 needed to pay each month to prevent the principal from increasing was \$3,100 –  
8 nearly \$400 *more* than the \$2755 monthly payment he was originally seeking to  
9 reduce; that Mr. Cuevas’ monthly payment could increase *every month* after the  
10 inception of the loan, not just once per year; and that the prepayment penalty on his  
11 existing loan was \$10,253, not \$7,000. Plaintiff, therefore, alleges that the true terms  
12 of this transaction were misrepresented to him at the closing.

13 Further, Mr. Cuevas alleges that he was not given accurate disclosures relating  
14 to the aforementioned transaction, in violation of state and federal law. After Plaintiff  
15 signed the closing documents of the aforementioned transaction, Defendants provided  
16 him with unsigned copies of the document notifying him of his right to rescind which  
17 contained contradictory and confusing information. Specifically, the transaction date  
18 and the expiration date were incorrectly entered creating the impression that Mr.  
19 Cuevas had more time in which to rescind. Defendants later made handwritten  
20 changes to these dates and then forged Mr. Cuevas’ initials on the documents to make  
21 the record in the file appear as though Mr. Cuevas had received the proper statutory  
22 notice of his rescission rights. In fact, Mr. Cuevas never received a copy of the  
23 “corrected” notice of right to rescind nor was he ever notified of these changes.

24 Adding to the confusion, funds were disbursed to Mr. Cuevas prior to the  
25 expiration of the noticed rescission period. Mr. Cuevas is now forced to file the  
26 instant action to avoid losing his home and recover damages caused by the fraudulent  
27 conduct and statutory violations engaged in by Defendants.

28 ***Defendants Description of the Case:***

29 Not available at this time.

1           2.       **Principle Factual Issues in Dispute:**

- 2           a.       Whether Defendants acted in concert to defraud Plaintiff of his home;
- 3           b.       Whether all communications between Plaintiff and Defendant Trevino
- 4 were exclusively in Spanish;
- 5           c.       Whether Defendant Trevino told Plaintiff that payments on the new loan
- 6 would be \$1800 per month including taxes and insurance;
- 7           d.       Whether Defendant Trevino told Plaintiff that the interest rate would
- 8 only go up once every year and that the payment would only go up by \$100-\$200 for
- 9 each of the first 5 years;
- 10          e.       Whether Defendant Trevino assured Plaintiff that it was in Plaintiff's
- 11 best interest to refinance in May of 2006 rather than wait until after November
- 12 of 2006, when the prepayment penalty on his preexisting loan expired;
- 13          f.       Whether Defendants steered Plaintiff into a loan that they knew Plaintiff
- 14 could not afford;
- 15          g.       Whether Defendant Trevino knowingly falsified Plaintiff's income and
- 16 other information on the loan application;
- 17          h.       Whether initials allegedly placed by Plaintiff on the signed Truth in
- 18 Lending disclosure by, dated June 2, 2006, were forged by Defendants.
- 19

20           3.       **Principle Legal Issues In Dispute:**

- 21           a.       Whether defendants violated the Truth in Lending Act, 15 U.S.C. §
- 22 1601 *et seq.*, and its implementing regulations, Federal Reserve Board Regulation Z,
- 23 12 C.F.R. § 226;
- 24           b.       Whether defendants violated the California Civil Code § 1632;
- 25           c.       Whether defendants Atlas, Trevino and Silbernagel fraudulently
- 26 induced plaintiff to enter into the May 31, 2006 mortgage transaction;
- 27           d.       Whether defendants Atlas, Trevino and Silbernagel breached their
- 28 fiduciary duty to plaintiff.
- 29           e.       Whether defendants violated California Business and Professions Code

§ 17200 *et seq.*

f. Whether defendants intentionally inflicted emotional distress upon plaintiff.

g. Whether defendants were negligent.

h. Whether defendants violated California Civil Code § 1750 *et seq.*

i. Whether defendants were unjustly enriched at the expense of plaintiff.

**4. Motions:**

There are no prior or pending motions at this time.

**5. Amendments of Pleadings:**

Plaintiff intends to amend his complaint on or before August 31, 2007.

**6. Evidence Preservation:**

Plaintiffs request that Defendants retain all currently existing documents and computer files relating to the mortgage transaction in question.

**7. The Parties Certify that They Have Made the Following Disclosures:**

Pursuant to the Case Management Scheduling Order issued on May 30, 2007, the Parties were asked to complete their FRCP Rule 26(a) initial disclosures by no later than August 24, 2007.

Plaintiff did not complete initial disclosures by this date because the complaint has not yet been served until August 24, 2007.

**8. Discovery:**

Plaintiffs and Defendants have not agreed to a Discovery plan as Defendants have not been served yet.

**9. Class Actions:**

This case is not a class action.

1 **10. Related Cases:**

2 There are no related cases or proceedings pending before another judge of this  
3 court, or before another court or administrative body.

4 **11. Relief:**

5 Plaintiff Cuevas is seeking cancellation of the Deed of Trust and any and all  
6 mortgage documents dated May 31, 2006; rescission of the Deed of Trust and any and  
7 all mortgage documents dated May 31, 2006 and any and all agreements or contracts  
8 that made up the fraudulent transaction at issue; an accounting, restitution and/or  
9 disgorgement; compensatory and general damages; special damages; punitive and  
10 exemplary damages according to proof; statutory damages pursuant to the Truth In  
11 Lending Act; costs and reasonable attorneys' fees; prejudgment interest; injunctive  
12 relief; and such other and further relief as the Court deems proper.

13 **12. The Parties have Filed a Stipulation and Proposed Order Selecting an**  
14 **ADR Process:**

15 Plaintiffs have not yet met and conferred with defendants since service has not  
16 yet occurred. However, plaintiffs are agreeable to mediation.

17 **13. Other References:**

18 Since plaintiffs have a claim for injunctive relief, this case is not appropriate  
19 for referral to binding arbitration.

20 **14. Narrowing of Issues:**

21 Not at this time.

22 **15. Expedited Schedule:**

23 Not at this time.

24 **16. Scheduling:**

25 None at this time.

26 **17. Trial:**

27 Plaintiff has requested that this case be tried before a jury. Plaintiff estimates  
28 7-10 full court days for trial.  
29

1 **18: Disclosure of Non-party Interested Entities or Persons:**

2 Plaintiff has not yet filed the Certification of Interested Entities or Persons.

3 Plaintiff certifies that, other than the named parties, there is no such interest to report.

4  
5 Dated: August 24, 2007

**FAIR HOUSING LAW PROJECT**

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7 \_\_\_\_\_/s/\_\_\_\_\_  
8 Annette D. Kirkham  
9 Attorney for Plaintiff:  
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**[PROPOSED] ORDER**

The Case Management Conference will be rescheduled to:

Complaint and Service of Summons will be filed and served by no later than  
August 31, 2007.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**HONORABLE JEREMY FOGEL**